

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF)

John Layous, et al.)

Serial No. 10/753,255)

Filed: January 8, 2004)

For: Processed Garlic Pieces)

Examiner: Helen F. Pratt

Art Unit: 1761

Date: April 4, 2006

**SECOND JOHN LAYOUS
DECLARATION**

Commissioner for Patents
Alexandria, VA 22313-1450

I, John Layous, declare as follows:

1. I am the inventors of the subject matter of the above-identified application. I have reviewed and understand the above-identified patent application, the pending claims contained therein, the rejections of the Office Actions, and the references cited by the Examiner in this application. I am making the following statements as one of ordinary skill in the art in the food industry and in particular one of ordinary skill in the art of growing and processing garlic, with which I have had hands-on experience for more than twenty five years.

2. My invention resides in a commercial garlic seasoning product in the form of crispy and crunchy tidbits of garlic (referred to in the patent specification as "garlic pieces") that have reduced garlic flavor and bitterness and which can be produced and distributed commercially, and stored and dispensed from a shaker. In addition, the crispy and crunchy tidbits of garlic of my invention have a generally uniform garlic flavor that can be widely accepted.

3. As one with many years growing and processing garlic I have never seen or known of a product like the one described and claimed in the above referenced application. The prior art presented by the Examiner, supports my understanding that there has never been a product like the one described and claimed in the above referenced application, as nothing like it is disclosed in the prior art.

4. In the process of making my invention, I first determined that to be acceptable to the widest possible audience the garlic flavor and bitterness would have to be reduced but remain strong enough to give a garlic flavor to food to which it was added.

5. My first instinct to reduce the flavor and bitterness from the garlic was to blanch whole, uncut cloves of garlic as they are relatively easy to handle in that form.

6. After considerable experimentation over a period of months I found that the time of blanching necessary to adequately reduce the garlic flavor at the center of a clove of garlic would reduce the outer, surrounding portions of

the cloves to a mushy pulp which was largely flavorless and difficult to process into individual pieces of garlic. I also found that blanching whole cloves of garlic for only the time necessary to reduce the garlic flavor from the outer portions of the garlic cloves and without reducing them to a mushy pulp, left the centers with undesired high levels of garlic flavor and bitterness. I also found that garlic cloves of different sizes required different blanch times to reduce the flavor to similar acceptable levels. I eventually concluded that the flavor and bitterness reduction could not be successfully performed on a commercial scale on whole cloves of garlic.

7. It was only by slicing the raw garlic cloves into pieces of generally uniform thickness that I was able to uniformly reduce the garlic flavor and bitterness from all of the garlic regardless of the initial size of the garlic clove or the location of the piece in the clove. By finding a reduction process that would act uniformly on all of the garlic and maintain the garlic in individual pieces, I was able to move forward to produce the desired end product.

8. Because in my invention raw garlic cloves are sliced into relatively small, generally uniformly thin pieces of garlic before they are processed to reduce flavor and bitterness, the fried end product is crispy and crunchy individual pieces (tidbits) of garlic having a roasted garlic flavor that is generally uniform from piece to piece and able to provide any food to which it is added with a toasted garlic flavor. It will be understood by those skilled in the food art that such uniformity is a critical requirement for a successful commercial product as a flavor additive.

9. The Meiji patent does not disclose or suggest a garlic seasoning product in the form of crispy and crunchy pieces of garlic, but rather discloses a process for completely eliminating “the odour of garlic from whole cloves of garlic” “without reducing nutritive component” in the garlic. The Meiji process involves: (1) blanching, whole peeled cloves of garlic by hot water immersion, steam treatment, or frying in oil, under ordinary pressure, or high frequency heating; (2) rapidly cooling the blanched cloves; and, (3) frying the blanched and cooled cloves under reduced pressure. The process is said to eliminate the activity of enzymes which cause the odour of garlic. The water content of the garlic is reduced to 5% or less to produce the end product - whole cloves of dried garlic having no garlic odour.

10. The process steps disclosed by Meiji are different than the process steps that produce my product and the end product of the Meiji invention is different from the end product of my invention and does not have the following features and characteristics of my invention:

- Thin, relatively small pieces of garlic (sliced from whole garlic cloves) of generally uniform thickness which:
- are crispy and crunchy;
- have a roasted garlic flavor;
- are sized to be stored and dispensed from a shaker;
- imbue foods to which they are applied with a roasted garlic flavor;
- have a generally uniform strength of garlic flavor that is reduced from the strength of garlic flavor of the raw garlic from which they

are derived or garlic that is only fried.

11. The Rombauer reference (the "Joy of Cooking" cook book) instructs cooks how to prepare various food dishes for serving as a meal or part of a meal. "Joy of Cooking" is not a guide to processes for producing food products on a commercial scale. With regard to adding a garlic flavor to a sauce, Rombauer instructs that whole cloves (not slices) of garlic are blanched in boiling water before being simmered in butter and then minced (chopped into very small pieces) for adding to a sauce. As pointed out above, blanching a garlic clove while whole produces an uneven strength of garlic flavor throughout the clove such that different portions of the minced garlic will have different strengths of garlic flavor. Those skilled in the art are aware that this lack of uniformity is not a problem for Rombauer's sauce, because the minced garlic is put into the sauce in which it is further cooked dispersing the garlic flavor throughout. Where the processed garlic is not put into another medium but rather stored in a container and dispensed from the container (such as a shaker) onto food as a seasoning, as in my invention, uniformity is necessary, as it is with all condiments sold commercially and used to flavor food. Those skilled in the art are aware that inconsistency would be unacceptable to any cook as he or she would not know how much seasoning to apply from one application to the next. Thus, Rombauer's suggestion for blanching garlic before, not after, the garlic is cut up, is fundamentally different from my invention.

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12. Furthermore, Rombauer does not instruct how to prepare pieces of fried and dried garlic that:

- are crispy and crunchy;
- have a generally uniform roasted garlic flavor; or
- are sized to be stored and dispensed from a shaker.

13. The Sakamoto patent describes a "Furnace Construction for Drying Garlic." Like Meiji, Sakamoto is primarily concerned with the health benefits of garlic (as opposed to its use as a food flavoring) and, in particular, with the loss of volatile elements of garlic during baking. Sakamoto explains that prior art baking methods and apparatus cause scratches on the surface of the garlic cloves and these scratches result in a substantial loss of volatile elements. The invention permits working with whole cloves of garlic only, and in a way that does not permit the escape of volatile elements. Thus, the idea of slicing the garlic before baking would be directly contrary to the teachings of Sakamoto and would literally undo the invention.

14. After being baked in the furnace vessel taught by Sakamoto, the whole garlic cloves are taken out of the vessel and *pulverized*. (Col 1, lines 71-72.) The end result (powdered garlic) has none of the physical characteristics of the product of my invention: thin pieces of garlic (sliced from whole garlic cloves) of generally uniform thickness which:

- are crispy and crunchy;
- have a roasted garlic flavor; and
- have a generally uniform strength of garlic flavor that is reduced from the

strength of garlic flavor of the raw garlic from which they are derived or garlic that is only fried.

15. None of the above cited patents discloses a commercial process which produces crispy and crunchy pieces of garlic that have the physical characteristics that allows them to be dispensed from a shaker or similar container and add a roasted garlic flavor to food to which they are applied. None discloses such a product having generally uniformly reduced garlic flavor and bitterness while at the same time adding a roasted garlic flavor to food.

16. The Examiner has opined that: “. . . it would have been obvious to cut garlic into small pieces as disclosed in Rombauer et al. in the process of Meiji if one wants small pieces or bits of garlic to reduce the flavor, without eliminating it.” However, one of ordinary skill in the art would have found the Meiji disclosure to be incompatible with cutting the garlic cloves into pieces as suggested by Rombauer, as Meiji specifically maintains the garlic cloves whole during blanching to preserve the nutritive components by preserving the garlic cells. By cutting the garlic all of the nutritive benefits claimed by Meiji would be lost and the crispy crunchy pieces of garlic having a roasted garlic flavor of my invention would not be achieved in any event as Meiji eliminates all of the garlic flavor as its main goal.

17. In stating that the Meiji process differs from the claimed process of the application only by the step of cutting the garlic into bits, it is apparently overlooked that Meiji eliminates all of the garlic odour whereas the claimed invention is used to give a garlic flavor to food. Furthermore, the step of

cutting up the garlic prior to reducing the flavor and bitterness is not seen in any of the prior art.

18. The Examiner has also opined that based on Sakamoto it would have been obvious to bake garlic to reduce its garlic flavor. However, those skilled in the art relying on Sakamoto would not cut the garlic prior to baking as that would be contrary to Sakamoto's teachings which instruct not to even scratch the surface of the garlic cloves.

19. Those skilled in the art will appreciate that the invention of the application is not merely a new way to prepare food. The invention is capable of producing a commercial product in large quantities, packaged for shipment and storage until sold, and dispensed on food as a seasoning. The claims are not directed to food on which my invention has been added or to recipes that have as a step the application of garlic pieces of my invention but rather to a novel form of garlic that makes it convenient and effective to add a roasted garlic flavor to food before, while or after it is prepared.

20. While those skilled in the art are familiar with cutting garlic into slivers for certain uses, and with baking garlic for certain purposes, and with frying garlic for certain purposes, no one has prior to my invention combined those process steps in such a way as to produce crispy, crunchy garlic pieces having a mild (reduced) roasted garlic flavor, which can be added to food from a shaker or similar dispenser to imbue the food with a generally acceptable garlic

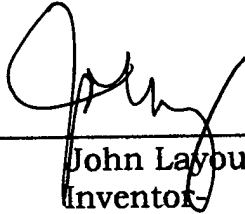
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flavor. Those skilled in the art would recognize the product of my invention as novel.

I declare under penalty of perjury that all statements made of the my own knowledge are true and that all statements made on information and belief are believed to be true and that the above statements were made with the knowledge that willful false statements and the like are punishable by fine and/or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, that any such willful false statement may jeopardize the validity of this application or any patent resulting therefrom.

Dated: April 4, 2006



John Layous
Inventor